

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v.-

ILYA KOGAN,

Defendant.

16 Cr. 221-1 (KPF)

**ORDER**

KATHERINE POLK FAILLA, District Judge:

This Court received Defendant Ilya Kogan's counseled motion for compassionate release, in the form of immediate release from custody to begin serving his term of home confinement, on June 10, 2020. (*See* Dkt. #251-255). The motion is now fully briefed and ready for resolution. (*See* Dkt. #256-257). In the course of reviewing the materials, however, the Court determined that it needed additional information from the parties in the following areas:

1. According to the Government, the Warden at FCI Cumberland has no record of receiving the request for compassionate release submitted by Mr. Kogan's wife on April 27, 2020. (*See* Dkt. #253-33 at 2 (request); Dkt. #256 at 4-5). Setting to the side for the moment the Government's argument that Mrs. Kogan was not a proper party to submit a request, the Court observes that the 30-day period set forth in 18 U.S.C. § 3582(c)(1)(A) begins to run from "the receipt of such a request by the warden of the defendant's facility." Moreover, in prior decisions, the Court has aligned itself with those judges who do not believe the exhaustion requirement in 18 U.S.C. § 3582(c)(1)(A) can be excused because of the COVID-

19 pandemic. *See, e.g., United States v. Hamed*, No. 17 Cr. 302-1 (KPF), 2020 WL 3268657, at \*3 (S.D.N.Y. June 17, 2020).

Accordingly, the Court directs the parties to advise it, as soon as possible, of the date on which the Warden at FCI Cumberland **received** a request for compassionate relief from Mr. Kogan or on his behalf. In particular, if the Government provided Ms. Kogan's request to the Warden in the course of determining whether the Warden had received the request, the Court seeks the date on which that provision took place.

2. According to the website of the federal Bureau of Prisons ("BOP"), the FCI Cumberland complex lists 2 inmates as currently testing "positive" for the COVID-19 virus, and 6 inmates and 6 staff members as having "recovered" from the virus. To the extent that either party has information specific to the camp at which Mr. Kogan is housed, the party is requested to provide that information to the Court as soon as possible.

SO ORDERED.

Dated: September 1, 2020  
New York, New York



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KATHERINE POLK FAILLA  
United States District Judge